

## **DECISION MEMORANDUM**

**TO: COMMISSIONER ANDERSON  
COMMISSIONER RAPER  
COMMISSIONER CHATBURN  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL**

**FROM: DAYN HARDIE  
DEPUTY ATTORNEY GENERAL**

**DATE: JANUARY 14, 2022**

**SUBJECT: IN THE MATTER OF IDAHO POWER COMPANY’S APPLICATION TO  
PROCEED WITH RESOURCE PROCUREMENTS TO MEET  
IDENTIFIED CAPACITY DEFICIENCIES IN 2023, 2024, AND 2025; CASE  
NO. IPC-E-21-41.**

On December 3, 2021, Idaho Power Company (“Company”) applied for authority to proceed “with procurement of capacity resources needed to provide adequate, reliable, and fair-priced service. Application at 1. The Company seeks an order: (1) eliminating the Commission’s requirement for the Company to comply with Oregon Public Utility Commission (“OPUC”) resource procurement rules in favor of a more expeditious—but still competitive—process; (2) authorizing it to move forward with resource procurements for recently identified generating resource needs in years 2023, 2024, and 2025; (3) affirming its support of vertically integrated utilities in Idaho maintaining ownership of the necessary generation, transmission, and distribution utility functions.

Industrial Customers of Idaho Power (“ICIP”), Idaho Conservation League (“ICL”), and Idaho Hydroelectric Power Producers Trust (“IdaHydro”) petitioned to intervene and on December 20, 2021, the Commission granted their intervention. Order No. 35278.

On December 10, 2021, IdaHydro filed a motion to dismiss. On December 15, 2021, ICIP filed a motion to dismiss. On December 22, 2021, ICL filed a motion to dismiss. The Company filed answers to the motions.

## MOTIONS AND ANSWERS

### **IdaHydro's Motion**

IdaHydro filed a motion to dismiss the Company's requests 2 and 3 in this Case claiming that the Company seeks to manipulate the first capacity deficit from Case No. IPC-E-21-09 so the Company can fill the deficit with utility owned resources in addition to requesting a Commission order finding that the Commission does not need to implement Public Utilities Regulatory Policy Act ("PURPA") and its "must buy" requirement.

IdaHydro states that Order No. 32697 requires request 2 to be heard in a separate docket, which is now fully submitted as Case No. IPC-E-21-09. IdaHydro states "Order No. 32697 explicitly sets forth the rationale for creating a separate capacity deficiency date for Surrogate Avoided Resource ["SAR"] purposes . . . to avoid manipulation of the capacity deficiency date. . . ." IdaHydro motion to dismiss at 1-2 (emphasis omitted). IdaHydro continues that "Request for Relief 2, seeking a capacity deficiency date in summer of 2023, in combination with Request for Relief 3, which seeks to manipulate to fill the capacity deficiency with utility-only resources, precisely realizes the concerns [Case No.] IPC-E-21-09 exists to overcome." *Id.* at 2 (emphasis omitted). IdaHydro argues request 2 should be dismissed so the requirements of Order No. 32697 are followed and the protections from manipulation of the capacity deficit date will exist.

IdaHydro argues that request 3 asks the Commission to find it does not have to conform to and implement PURPA which requires regulated utilities to pay qualifying facilities ("QF") avoided costs of energy and capacity. IdaHydro states this is the wrong time to disturb settled law. IdaHydro adds that the Commission must enforce the "must buy" obligation requiring a regulated utility to buy "QF electricity and to include capacity payments for that electricity in the avoided costs in accordance with the SAR methodology chosen by the Commission." *Id.*

### **The Company's Answer to IdaHydro**

The Company filed an answer to IdaHydro's motions in this case and Case No. IPC-E-21-09.<sup>1</sup> The Company argues that IdaHydro's motion in this case should be dismissed because dismissal of the Company's request (as requested in IdaHydro's motion) is an inappropriate "remedy for IdaHydro's request to set the capacity deficiency [date] for PURPA avoided cost pricing," which the Company states is properly before the Commission in the fully submitted Case No. IPC-E-21-09—a case IdaHydro has participated in. Idaho Power Reply to IdaHydro at 5-6.

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<sup>1</sup> This memo will only incorporate the reply relevant to this case.

The Company continues that the Commission already has a separate process outside the integrated resource plan (“IRP”) for setting PURPA avoided cost rates. The Company notes that its most recent IRP was acknowledged by the Commission on March 16, 2021 and did not show the Company’s first capacity deficit date until summer 2028. The Company filed Case No. IPC-E-21-09, less than a month after acknowledgement of its IRP was acknowledged, to verify the capacity deficiency date identified in the IRP was correct.<sup>2</sup> The Company states “[i]t is unclear from IdaHydro’s [motion] . . . why it would be necessary to dismiss Idaho Power’s requested relief in [this] case in order to set a proper capacity deficiency [date] according to its unique process and docket for PURPA avoided cost.” *Id.* at 7.

The Company states that nothing in its Application suggests that it is “refusing or will refuse to follow PURPA’s mandatory purchasing obligation.” *Id.* The Company states it will continue to purchase all PURPA generation it is required to at rates established by the Commission. The Company notes that IdaHydro fails to mention specific members of its organization that would allegedly be harmed if the Company’s requests in its Application are granted. To support its position, the Company states that it “does not have a choice but to acquire and procure additional generation resources to meet the identified capacity deficits in 2023, 2024, and 2025.” *Id.* at 7-8. The Company states it is required to “cost effectively and reliably serve all load.” *Id.* at 7. The Company adds that “[b]ecause of the unanticipated and rapid nature of the emergence of these capacity deficits, there is little time to develop such resources. It is likely that the Company will need all available resources—[C]ompany-owned, PURPA, third-party non-PURPA, and any generation that can be developed and brought online in time to meet these deficits.” *Id.* at 8. The Company argues that it “must do this in a rapidly changing and dynamic environment, with an already short turnaround time to meet deficits in 2023.” *Id.*

### **ICIP’s Motion**

ICIP filed a motion to dismiss the Company’s Application to allow the process in Case No. IPC-E-21-19 to proceed.<sup>3</sup> ICIP’s motion alleges that the Company’s filing in this case is (1) duplicative of Case No. IPC-E-21-19; (2) made with unclean hands; and (3) fails substantively.

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<sup>2</sup> The Company subsequently filed its 2021 IRP (Case No. IPC-E-21-43) with an updated load and resource balance analysis that shows a first capacity deficit of 78 MW in June 2023.

<sup>3</sup> Case No. IPC-E-21-19 is ICIP’s petition for a show cause order regarding the Company’s compliance with Order No. 32745 which directed the Company to follow Oregon’s resource procurement guidelines.

ICIP states “[t]his docket . . . is duplicative of Docket No. IPC-E-21-19 which was initiated by the ICIP for the purpose of requiring Idaho Power to show cause why it should not be ordered to comply with the Idaho Commission’s competitive bidding requirements.”<sup>4</sup> ICIP’s motion to dismiss at 4. ICIP believes this case is duplicative of Case No. IPC-E-21-19 and therefore should be dismissed. Additionally, ICIP states that the Company is attempting to expand its “procedural rights by ignoring the existing, fully submitted docket . . . [in] Case No. IPC-E-21-19” *Id.* at 5.

ICIP claims the Commission relied on the Company’s endorsement of Oregon’s rules for resource procurement competitive bidding as established by Order No. 32745. ICIP states that “as recently as July [2021], [the Company] assured the Commission and the ICIP of its intent to fully comply with those requirements.” *Id.* ICIP cites the Company’s answer in Case No. IPC-E-21-19 wherein ICIP states the Company represented that after becoming “aware of its pending resource deficit in the year 2023 and well after it had issued its RFP for up to 80 MW of new resources beginning in 2023,” it promised to follow the Oregon resource procurement competitive bidding requirements as adopted by the Idaho PUC. *Id.* ICIP states that the Company “reassured the Commission that it would have no problem complying with [Oregon’s resource procurement] rules, and that it would be able to apprise the Commission of the need for new resources ‘well in advance’ of the commencement of the RFP process.” *Id.* at 8. Based on this, ICIP requests that its petition for a show cause order be granted in Case No. IPC-E-21-19, noting that it has been fully submitted since early July.

ICIP argues that the crux of the Company’s request for a waiver from Oregon’s resource procurement rules is the timing issue. ICIP argues that six months have already passed since the Company issued its first RFP in addition to the months it would have taken internally to prepare the RFP. ICIP states that the Company could have initiated the competitive bidding process when it first learned of the capacity deficits, arguing “there was and, and still is, adequate time to do so. *Id.* Instead, ICIP states “the Company has been sitting on [its] hands and is facing a time crunch of its own creating.” *Id.* at 8-9.

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<sup>4</sup> The Idaho Commission directed the Company to follow Oregon’s resource procurement guidelines in Oregon No. 32745. Those guidelines were later codified into rules. This memo will refer to Oregon’s resource procurement rules as opposed to competitive bidding guidelines.

## **The Company's Answer to ICIP and ICL<sup>5</sup>**

In response to ICIP's motion, the Company states its "Application is clearly not the initiation of duplicate proceedings with ICIP's Petition for an Order to Show Cause [Case No. IPC-E-21-19]. The allegation of ['unclean hands'] is false and has no application to Idaho Power's ability to lawfully seek waiver, relief, and/or authority from its regulators. Whether or not 'Idaho Power's Substantive Arguments Also Fail' is for the Commission's determination in the proceedings initiated in this case. Consequently, ICIP's Motion to Dismiss should be denied." Idaho Power's Answer to ICIP and ICL at 2.

The Company argues that Case No. IPC-E-21-19 is different from this case in that ICIP asked "[t]hat the Commission enter an Order to Show Cause directing Idaho Power to show cause why the Commission should not enter an order requiring it to comply with Idaho PUC Order No. 34275 and the Oregon [resource procurement] guidelines...." *Id.*; quoting ICIP's Motion to Dismiss. The Company cites its Answer in Case No. IPC-E-21-19 where it noted that the RFP it issued was for a generation resource up to 80 MW of capacity (which falls below the limit established by Oregon's resource procurement rules established in OAR 860-089-0100(1)(a)). The Company argues that its Application in this case is not duplicative of Case No. IPC-E-21-19 since it is seeking authority to procure capacity resources to meet identified deficits in 2023, 2024, and 2025. This Application, the Company states, addresses "the necessary future procurements required to meet identified capacity deficiencies beyond the initial 80 MW identified in summer 2023." *Id.* at 4. The Company adds that this Application addresses additional procurements and seeks different relief that is not duplicative of ICIP's petition for a show cause order in Case No. IPC-E-21-19.

The Company defends its Application seeking to acquire new capacity resources outside of the Oregon resource procurement rules. Responding to ICIP's position that the Company has unclean hands because it has never challenged the Oregon resource procurement rules as adopted by the Commission in Order No. 32745, the Company argues, is off basis. The Company asserts that Oregon's resource procurement rules allow for a Company to seek a waiver and therefore no violation exists since the Company now seeks a waiver pursuant to the applicable provision(s) of Oregon's resource procurement rules. The Company disagrees with ICIP's

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<sup>5</sup> ICL filed a motion to dismiss this case on December 22, 2021 seeking the same relief as ICIP and IdaHydro. The Company's Answer to ICIP also was used to respond to ICL's motion.

contention that the Company's answer in Case No. IPC-E-21-19 where the Company indicated, "it intended to fully comply and follow the OPUC procurement rules" precludes it from seeking a waiver. *Id.* at 6. The Company argues its answer in Case No. IPC-E-21-19 does not preclude it from seeking a waiver of Oregon's resource procurement rules, due to "unclean hands." *Id.* The Company contends that ICIP's motion only included incomplete portions of the Company's answer in Case No. IPC-E-21-19 and fails to reference the relevant portions that mention the possibility of seeking a waiver from Oregon's resource procurement rules—which the Company is requesting in this case along with a companion request in Oregon. The Company states it is aware of Oregon's resource procurement rules it has been ordered to follow by the Commission and subject to provisions of those rules is seeking modification based on "current facts, circumstances, and conditions." *Id.* at 7. The Company does not believe this is evidence of unclean hands and asks the Commission to deny ICIP's motion.

Regarding ICIP's position that the Company could have gone through the procedures outlined in Oregon's procurement rules, it argues that ICIP offers no support for its position, or the timeline required by Oregon's rules in relation to the time it would take to construct resources to meet the identified capacity deficiency dates. The Company supports its argument by pointing to its Application which describes the unanticipated development of the coming capacity deficit and the small window for the Company to fully comply with the Oregon procurement rules and construction timelines. The Company notes that following the Oregon procurement rules could take 18-24 months just to get a short list of bidders. The Company request that ICIP's motion be denied.

### **STAFF RECOMMENDATIONS**

Staff has reviewed the Application and motions filed by IdaHydro, ICIP, and ICL and the Company's answers to each. Staff took no position on the motions or answers. Staff recommends the Commission consider each motion to dismiss and the respective answers and determine if it wishes to dismiss the case or proceed and initiate initial procedures for this case. If the Commission wishes to proceed with establishing initial procedure, then Staff recommends the Commission issue a Notice of Application and Notice of Intervention Deadline establishing a 14-day intervention period. Staff also recommends that the Commission direct Staff to work informally with the parties to discuss scheduling and other matters that may arise, and for Staff to then report to the Commission with a proposed schedule.

## COMMISSION DECISION

Does the Commission wish to dismiss this case for any of the reasons addressed in the motions to dismiss or does the Commission wish to issue a Notice of Application, and Notice of Intervention Deadline establishing a 14-day intervention period? If the Commission wishes to deny the motions and issues a Notice of Application and Notice of Intervention Deadline, does the Commission also wish to direct Staff to work informally with the parties to discuss scheduling and other matters that may arise, and for Staff to then report to the Commission with a proposed schedule?



Dayn Hardie  
Deputy Attorney General

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